

NTSB Order No. EA-3662

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of August, 1992

Docket SE-10384

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on July 19, 1990, following an evidentiary hearing.¹ We deny the appeal.²

²The Administrator has not appealed the sanction reduction. However, in addition to filing a reply to the appeal, the Administrator has filed a motion to strike an attachment to that appeal. The attachment is a verified statement by the owner of

The order of suspension (complaint) alleged that respondent violated Federal Aviation Regulation § 43.15(a)(1) ("FAR," 14 C.F.R. Part 43) in logging an aircraft as airworthy following an annual inspection when, in fact, respondent had failed to comply with three airworthiness directives ("AD").³

Respondent primarily argues that the burden of proof was improperly placed on him.⁴ We have carefully reviewed the allegations in support of this claim, and find that respondent misconstrues the nature of this proceeding and the burden of proof. The record offers no indication that the burden was

(..continued)
the aircraft.

The motion will be granted and the attachment stricken from the record. The Board's rules do not permit the filing or consideration of new evidence at this stage of the proceeding. See 49 C.F.R. 821.49. Moreover, when reopening on the basis of new evidence is sought, strict rules govern its acceptance. The evidence must be newly discovered, unavailable for production at the hearing before the law judge. See 49 C.F.R. 821.50 (c).

³14 C.F.R. 43.15, as pertinent, reads:

(a) General. Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall -

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all the applicable airworthiness requirements[.]

The Administrator cited discrepancies with regard to three airworthiness directives. At the hearing, the number was reduced to two: AD 79-08-03, requiring rerouting the wiring for or disconnecting the cigarette lighter, and AD 79-15-01, requiring a placard, a special procedure card, and an entry in the aircraft equipment list regarding fuel flow fluctuations.

⁴Respondent makes a number of other claims (e.g., regarding the informal conference and use of a special flight permit) which, because they are irrelevant to the issues in this proceeding, will not be considered.

shifted. Respondent's perception is, perhaps, caused by two misunderstandings.

First, a number of respondent's arguments appear to proceed from the premise that the Administrator must prove his case beyond any doubt. The test, however, is a preponderance of the evidence. A review of the record leaves no doubt that the Administrator introduced substantial, reliable evidence to support the complaint, and we see no error in the law judge's agreement with it.

For example, the Administrator introduced evidence to show that none of AD 79-15-01's requirements had been met and, as a result, the aircraft was unairworthy. This evidence included testimony from a mechanic who subsequently worked on the aircraft.⁵ He stated that he found no placard or evidence of glue or tape, and that the panel where the placard would have been affixed showed no evidence of new paint, and was the original as far as he could tell. Tr. at 22. Respondent offered no evidence to rebut this testimony. Although it is clear that respondent was advocating that the pertinent portion of the inside of the aircraft had been painted after his inspection, his suggestions to this effect in his argument, while acting as counsel, are not evidence. He did not testify, nor did he offer a witness to support his suggestion. In the circumstances, it

⁵The aircraft had been flown only a few hours between respondent's inspection and this mechanic's involvement.

was not unreasonable or improper for the law judge to conclude that the Administrator had proven this allegation by a preponderance of the evidence.

Second, and related, is respondent's criticism of the law judge's reliance on the testimony of the Administrator's two witnesses. As we have said on numerous occasions, issues of witness credibility are peculiarly within the province of the law judge, as he is able personally to observe witness demeanor. His resolution of credibility issues is not subject to reversal unless shown to be arbitrary or capricious. Administrator v. Smith, 5 NTSB 1560, 1563 (1987), and cases cited there.

Respondent offers no basis to find the law judge's factual conclusions -- based on weighing the various and, at points, conflicting testimony -- either arbitrary or capricious.

Again, as an example, we see no error in the law judge's acceptance of the testimony of the subsequent mechanic that the cigarette lighter was connected when he examined the aircraft, rather than the testimony of respondent's sole witness that he saw the lighter disconnected. Conflicting testimony on a material issue requires the law judge to choose. In this case, his choice was supported by documentary evidence, in that the aircraft log did not indicate compliance with the AD.⁶

Respondent also contends that he was denied due process by

⁶The same was true with regard to AD 79-15-01, compliance with which should have been (but was not) indicated in the log.

various actions of the law judge. We see no impropriety warranting reversal. Respondent was given a full and fair hearing, and the law judge, recognizing respondent's lack of counsel, took steps throughout the proceeding to explain procedures to him.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 60-day suspension of respondent's inspection authorization shall begin 30 days from the date of service of this order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷For the purposes of this order, respondent must physically surrender his inspection authorization to an appropriate representative of the FAA pursuant to FAR § 61.19(f).